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and certain subsidiaries

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF ARIZONA**

In re:	)	In Proceedings Under Chapter 11
	)	
BAPTIST FOUNDATION OF ARIZONA, an	)	Case Nos. 99-13275-ECF-GBN through 99-
Arizona nonprofit 501(c)(3) corporation, and	)	13364-ECF-GBN
related proceedings,	)	
	)	All Cases Jointly Administered Under Case
Debtors.	)	No. 99-13275-ECF-GBN
	)	<b>DEBTORS' OBJECTION TO CLAIM OF</b>
	)	<b>SUNGARD TRUST SYSTEMS, INC.</b>
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Pursuant to Rule 3007 of the Bankruptcy Rules of Procedure and Section 502(a) of the Bankruptcy Code, Debtor and Debtor-in-Possession, Baptist Foundation of Arizona, Inc. (and certain of its subsidiaries, who also may be co-debtors, as applicable; collectively “**BFA**”), submits the following objection to the proof of claim filed by Sungard Trust Systems, Inc. (“**Sungard**”). In support of this objection, BFA offers the following memorandum of points and authorities.

## **MEMORANDUM IN SUPPORT OF OBJECTION**

### **I. FACTS**

1. Sungard was a BFA vendor that contracted to provide BFA with a computerized trust management system, including hardware and software. The balance of the contract price that Sungard seeks to recover is \$153,837.13, comprised of the following:
  - a. \$38,076.66 for the purchase of system hardware;
  - b. \$55,807.50 for system software;
  - c. \$13,291.80 for twelve months of support services;
  - d. \$14,250 for conversion of BFA's system and implementation of the Sungard system;
  - e. \$2,625 for training BFA's personnel;
  - f. \$3,286.17 for travel and living expenses of Sungard's personnel; and,
  - g. \$25,500 for Sungard's development of interfaces for BFA's other hardware and software systems.
2. At the time that BFA filed its bankruptcy petition, Sungard only recently had commenced installing the new trust system. After the petition was filed, Sungard ceased work on the project. The trust system remains largely uninstalled and is not operational.
3. On March 30, 2000, BFA filed its "Motion for Order Authorizing and Approving Rejection of Executory Contracts and Unexpired Lease" (the "Section 365 Motion"). Among the executory contracts that BFA sought to reject was its contract with Sungard. On April 19, 2000, this Court issued an order granting BFA the relief that it sought in the Section 365 Motion.

4. BFA continues to have in its possession a number of pieces of Sungard's hardware and software. Despite repeated written and oral notices to Sungard, Sungard has failed and refused to retrieve its hardware and software.
5. BFA is unaware that Sungard provided support services, conversion and implementation services, training, or interface development services to BFA that would justify the fees sought in Sungard's claim. BFA concedes that Sungard may have incurred travel and living expenses in the early stages of the project that Sungard ceased when BFA filed its bankruptcy petition, and that some small amount of services were performed. The value of these services remains unproven by Sungard and disputed by BFA.

### **III. BASIS FOR OBJECTIONS**

Objections to claims are governed by 11 U.S.C. § 502(a), which provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, . . . objects." Section 502(b) provides that "[i]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount." Federal Rule of Bankruptcy Procedure 3001(f) provides that a proof of claim filed in accordance with the rules "shall constitute prima facie evidence of the validity and amount of the claim." The burden of proof is on the objecting party to produce evidence equivalent in probative value to that of the creditor to rebut the prima facie effect of the proof of claim. However, "the ultimate burden of persuasion is always on the claimant." In Re Holm, 931 F.2d 620, 623 (9th Cir. 1991) (citing 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991) (footnotes omitted)). A properly supported objection to a claim initiates a contested matter under the Bankruptcy Rules of Procedure. See Fed. R. Bankr. P. 3007(adv. comm. note).

BFA contests that Sungard provided most of the services for which it now seeks payment. Moreover, BFA rejected the executory Sungard contract, and Sungard has failed and refused to retrieve its unused hardware and software. Accordingly, any legitimate claim that Sungard may assert against BFA properly may be reduced by the value that could be obtained for the hardware and software by selling it to another purchaser (or by, in some other manner, mitigating its damages). In summary, this Court should require Sungard to adduce admissible evidence that, under applicable law, demonstrates the merits of its claim.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of November, 2000.

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